



POLITICS IN THE COURTROOM: LAWFARE AND IMPEACHMENT IN SOUTH KOREA'S POST-MARTIAL LAW ERA

by
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South Korea's democratic system is being dramatically reshaped by the intricate dance between law and politics. The judicialization of politics, and in reverse, the politicization of the judiciary has blurred the lines between rightful accountability and political vengeance. With [30 impeachment motions](#), the ousting of a sitting president, and an upcoming court ruling involving a prominent presidential candidate, monumental decisions rest in [the hands of a few judicial figures](#). Both the Democratic Party (DP) and the People Power Party (PPP) have stoked this climate of judicialization, transforming political disputes into high-stakes legal battles.

The Impeachment Process: How does it work?

The impeachment process was originally designed to serve as a constitutional safeguard to hold [public officials accountable for serious misconduct](#). The drafters of the South Korean Constitution had adopted a [legalistic approach to impeachment](#), dividing the process into a [three-step mechanism](#): first, a simple majority of the 300-member National Assembly vote to initiate the process; second, the motion requires approval. A two-thirds vote is required to approve a motion against a president, but only a simple majority is needed for other public officials. Lastly, the Constitutional Court decides whether to uphold or reject impeachment. However, the 2004 impeachment, and subsequent reinstatement of President Roh Moo-hyun established a crucial precedent, [asserting that impeachment should be reserved for grave violations](#). The Constitutional Court defined "grave violation" by [weighing harm to the constitutional order against the impact of impeachment](#), but this vague standard leaves room for political interpretation.

When Courts Get Political

There are differing views on how involved the

judiciary should be in politics. While some argue for strict judicial independence, others note that courts are inherently political institutions – especially when tasked with [interpreting the constitution](#) in a complex political environment. These scholars argue that absolute independence is [neither feasible nor desirable in a body entrusted with constitutional adjudication](#). However, critics warn that this trend [threatens the rule of law](#) by politicizing the judiciary and undermining public trust, creating a vicious cycle of skepticism. Overreliance on judicial intervention may also create a ["political void,"](#) where essential political dialogue and compromise are sidelined. Some observers contend that politics is increasingly being "captured by the judiciary," noting that [60 current lawmakers come from legal backgrounds](#). With nearly a third of lawmakers from legal backgrounds, it is perhaps natural that the judiciary is increasingly seen as a means to resolve political conflicts.

Impeachment must be considered within the wider political and judicial context. The rise of judicialization – resolving [political disputes through the courts](#) – often leads to the inverse: the politicization of the judiciary. As courts are more frequently tasked with resolving political disputes, their authority has expanded, accompanied by heightened public scrutiny. Some rulings may [reflect compromise, shaped more by public sentiment than strict legal reasoning, while others could reveal judicial bias](#). Though unelected and seemingly [undemocratic through the lens of majority rule, it is precisely this independence from electoral pressures that underpins its legitimacy](#).

The politicization of the judiciary has deepened as [political disputes increasingly play out in court](#), with both major parties attempting to influence judicial outcomes. The judiciary often plays a crucial role in resolving partisan conflicts, yet its legitimacy may be challenged when its rulings are perceived as unfavorable. Following Yoon Suk-yeol's martial law imposition, approximately [33 lawmakers have been subject to civil and criminal complaints](#). The PPP accused [19 DP lawmakers of witness intimidation, while the DP charged 14 PPP lawmakers](#) with supporting



or justifying Yoon's actions. This tit-for-tat legal warfare reflects the deeper dysfunction of political dialogue, as nearly one-in-ten lawmakers face legal complaints. The DP has expanded this approach beyond parliament, filing [complaints against nearly 100 individuals](#), including military officers, protesters, and Yoon supporters – illustrating a growing reliance on lawfare over political compromise.

Clashing Views: Law, Politics, and the Fight Over Impeachment

The DP's second attempt to [impeach Finance Minister Choi Sang-mok](#) unfolded amid a series of rapid political developments: the [resignation of Acting President Han Duck-soo](#) and the [Supreme Court's overturn of Lee Jae-myung's acquittal](#). The DP initially filed for an [impeachment motion for Choi's failure to appoint](#) a ninth Constitutional Court judge on March 21, but the process was suspended following Han's reinstatement. Despite the DP's insistence that the impeachment motion was not retaliatory, its timing inevitably raised skepticism. Moreover, by the time of Choi's potential assumption of office, the [ninth judge had already been appointed](#), resolving the quorum crisis that previously justified political intervention. The [DP adjusted the legislative schedule to fast-track the vote, but Choi resigned](#) after a few minutes – blocking the motion and adding to institutional uncertainty.

The DP accused Acting President Han and Supreme Court Justice Jo Hee-de of orchestrating a [“staged presidential bid,”](#) framing the impeachment against Choi as a necessary step to prevent politicization. From the DP's perspective, pushing forward with impeachment was important to protect the rule of law from judicial manipulation – with [DP floor Leader Park Chan-dae likening it to a “coup.”](#) However, the PPP condemned the DP's actions as politically motivated, likening their [impeachment drive as “thuggish, gangster politics.”](#) Both parties see themselves as defenders of the law and acting in the nation's best interests, underscoring how deeply polarized political and judicial conflicts have become in South Korea.

The DP responded strongly to the Supreme Court's decision to overturn Lee Jae-myung's appellate acquittal, framing the ruling as judicial overreach. The Court's unusual and swift handling of the case – [bypassing the customary small panel review process](#) and delivering a ruling almost [two months ahead of the deadline](#) – fueled suspicion of political motives. Although some legal scholars defended the expedited process as a way to [minimize election-period uncertainty](#), others viewed it as a calculated intervention in the June 3 presidential election. At the center of their criticism was Chief Justice Jo Hee-dae, [appointed by Yoon](#) in late 2023, whom they [accused of power abuse](#) and [electoral interference](#). DP lawmakers proposed launching a [special counsel investigation](#) into alleged judicial abuse and floated the unprecedented threat of [impeaching the justices responsible for the majority ruling](#) – excluding the two dissenters. At the same time, [opinions within the judiciary were split](#) – while some respected the Supreme Court's decision, others called for Jo's resignation.

Impeachment as a Legislative Strategy

Due to the impeachment process established by the Constitutional Court Act, impeachment can easily become a [tool of lawfare](#) when the president's party is in the minority. With the DP holding [around 170 seats](#) and opposition parties combined controlling [nearly 190 of the 300 National Assembly seats](#), they can unilaterally push forward impeachment efforts. The DP frequently used impeachment motions to challenge government officials, filing over 20 motions against Yoon's administration – which [Yoon used to justify his martial law declaration](#). The advantage has raised concerns that the standard for initiating impeachment proceedings is being reduced. This problem highlights the potential for [legislative tyranny by the supermajority party](#). Further fueling tensions, the DP have [advanced a series of controversial bills](#) – widely viewed as attempts to shield Lee Jae-myung from his legal troubles.

The DP proposed an amendment to the Court Organization Act to increase the number of Supreme



Court justices. While presented as a reform to improve court efficiency and representativeness, critics [dismissed it as an attempt at court-packing](#) – which led the DP to [withdraw the motion](#). The party has also pushed for an amendment to the Criminal Procedure Act that would [suspend all ongoing court trials until the end of a presidential term](#) – effectively delaying Lee’s election law case. They also introduced a proposal to revise the Constitutional Court Act to allow [constitutional petitions against final court rulings](#) – currently shielded from such challenges to protect judicial independence. Critics warn that the proposed amendment could [erode judicial impartiality by enabling retroactive, politically motivated legal challenges](#). Undermining judicial independence [risks long-term harm](#) not only to the justice system but to the health of democracy itself.

Restoring Balance: Judicial Integrity and Democratic Accountability

Striking a balance between law and politics is a difficult task. Placing political disputes of national consequence in the hands of the judiciary can distort its role and shift responsibility away from elected bodies. At the same time, politicizing the judiciary through interference or pressure undermines its independence. Neither excessive judicialization nor politicization

serves a healthy democracy. To chart a more stable and credible path forward, South Korea must address the growing tension between law and politics.

While political-judicial tension is not unique to Korea, its current intensity underscores the urgent need for reform. Ambiguities in legal statutes have fostered confusion and inconsistent rulings, making the impeachment process vulnerable to political misuse. To maintain its function as a tool of public accountability, impeachment should be based on clear and objective standards, specifically limited to significant constitutional violations or severe misconduct. Political actors should refrain from court-packing and undue pressure on judges, instead prioritizing protections for judicial independence. Any structural reform to the judiciary should be pursued through bipartisan consensus or independent review to ensure the preservation of institutional integrity and the maintenance of democratic balance.

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